## UNITED STATES DISTRICT COURT DISTRICT OF NEVADA

ANDREW HILFORD,	) 3:12-cv-00329-RCJ-WGC
Plaintiff, vs.	) MINUTES OF THE COURT
CHRISTOPHER ROWLEY, et al.,	) April 17, 2013
Defendants.	) ) _)
PRESENT: THE HONORABLE WILLIAM G. COBB, U.S. MAGISTRATE JUDGE	
DEPUTY CLERK: KATIE LYNN OGDEN REPORTER: NONE APPEARING	
COUNSEL FOR PLAINTIFF(S): NONE APPEARING	
COUNSEL FOR DEFENDANT(S): NONE APPEARING	

## MINUTE ORDER IN CHAMBERS:

Before the court is Plaintiff's Motion Requesting Order by Default (Doc. # 19). The office of the Attorney General of the State of Nevada has filed its opposition (Doc. # 20).

It appears that the basis for Plaintiff's motion is that Plaintiff claims the Attorney General's Office is "hindering and delaying" attempted service upon the Defendant by allegedly not filing the correct address for the Defendant. (Doc. # 19 at 1.) However, Deputy Attorney General Kaitlyn Miller represents that the Defendant's true and correct last known address was provided the court. Counsel further represents that the U.S. Marshal's Office returned the summons unexecuted because the Defendant William Gittere is in military service and stationed overseas. This assertion is confirmed by the filing of the unexecuted USM Return (Doc. # 18).

The grounds for entry of a default are that on "affidavit or otherwise" of Plaintiff showing that (in this instance) the defendant either failed to plead or defend, a default may be entered. Fed. R. Civ. P. 55(a). The obligation to defend a lawsuit arises only after one has been served. A defendant has 21 days after service within which to file an answer to a complaint. Fed. R. Civ. P. 12(a)(1)(A). Since Defendant Gittere has never been served (Doc. # 18), his obligation to appear

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and defend has not yet commenced.1

Accordingly, Plaintiff's motion is **DENIED**.

IT IS SO ORDERED.

LANCE S. WILSON, CLERK

By: /s/
Deputy Clerk

<sup>&</sup>lt;sup>1</sup> Ms. Miller requests that the matter be dismissed under Federal Rule of Civil Procedure 4(m) for failing to effect timely service within 120 days. The court notes a separate motion (Doc. # 24) was filed seeking a dismissal of the action for failure to effect timely service. However, inasmuch as the motion was just filed on April 10, 2013, the time within which Plaintiff has to file a response has not yet expired and will not be addressed herein. In that regard, a "4(m)" Notice has been entered herein allowing Plaintiff until May 17, 2013, to either effect service or to provide good cause why service has not been effected (Doc. # 26).